**Section 240.133 Hearings to Establish Pool-Wide Drilling Units**

a) Commencement of Action

1) Any interested person may petition the Department for a hearing to *establish a drilling unit or units for the production of oil and gas or either of them for each pool* to which the interested person owns some portion of the oil and gas. (Section 21.1 of the Act)

2) The petition for hearing to establish a drilling unit or units shall contain the following:

A) The name and address of the petitioner;

B) A legal description of the size of the drilling unit sought to be established;

C) A legal description of the extent of the reservoir to which the drilling unit or units are sought to be established;

D) A list of the names and addresses of all permittees of oil or gas interests in the reservoir;

E) A geologic description of the pool and an isopach and structure map of the reservoir, for which the drilling unit is sought showing the productive limits of the reservoir;

F) A plat showing all oil and gas or water injection or storage wells completed within the pool (reservoir);

G) Geologic and engineering reports outlining the reasons for and data supporting the proposed size of the drilling unit or units.

3) If the establishment of a drilling unit or units would require the integration of separately owned interests in the drilling unit or units, the petitioner may contemporaneously file a petition under Section 240.132 and the matters shall then be consolidated and heard together.

b) Execution and Filing

1) The petition to establish drilling units shall be sent to the Department at One Natural Resources Way, Springfield IL 62702.

2) Every petition shall be signed by the petitioner or his or her representative and the petitioner's address shall be stated on the petition. The signature of the petitioner or his or her representative constitutes a certificate that he or she has read the petition and that, to the best of his or her knowledge, information and belief, there is good ground to support the petition. The petition shall be accompanied by a non-refundable application fee in the amount of $2,500.

3) If the Department finds the petition deficient relative to the requirements of subsection (a), subsection (b)(2) or Section 240.250(b), the petition shall not be accepted and the Department shall return the petition to the applicant with a statement as to the deficiencies. The Department shall return any unaccepted petition within 30 days after its receipt. A returned petition shall not be considered filed until the deficiencies have been cured.

c) Notice of Hearing

1) Upon the receipt of an accepted petition to establish drilling units, the Department shall fix the time and place for a hearing.

2) The Department shall prepare a notice of hearing, which shall issue in the name of the State of Illinois and shall be signed by the Director. The notice shall specify the number and style of the proceeding, the time and place of the hearing, the purpose of the hearing, the name of the petitioner, and a legal description of the affected lands. The notice shall also state that any interested person may file an entry of appearance in the hearing by submitting an entry of appearance in writing to the Department and that person shall be deemed a party of record in the proceeding.

3) The Department shall mail the notice to the petitioner who shall then serve notice in the following manner:

A) By mailing the notice by U.S. Postal Service certified mail with return receipt, directed to the persons named in the petition pursuant to subsection (a)(2)(D) at their last known addresses at least 20 days prior to the hearing; and

B) By publication of the notice for service on those persons whose addresses are unknown or whose names are unknown and for those owners of unleased mineral rights, once each week for 2 consecutive weeks, with the first notice appearing at least 20 days prior to the hearing in a newspaper of general circulation published in each county containing some portion of the proposed integrated unit.

4) Whenever the Department determines that a notice of hearing should be served upon a person because the granting or denying of the relief requested in the petition would materially affect that person's rights or property, the Department shall cause notice to be sent to the person, as provided in this subsection (c).

d) Pre-Hearing Conferences

1) Upon his or her own motion or the motion of a party, the Hearing Officer shall direct the parties or their counsel to meet for a conference in order to:

A) Simplify the factual and legal issues presented by the hearing request;

B) Receive stipulations, admissions of fact and of the contents and authenticity of documents;

C) Exchange lists of witnesses the parties intend to have testify and copies of all documents the parties intend to introduce into evidence at the hearing; and

D) Discuss and resolve such other matters as may tend to expedite the disposition of the hearing request and to assure a just conclusion.

2) Pre-hearing conferences may be held by telephone conference if that procedure is acceptable to all parties.

e) Hearing

1) Conduct of Hearing: Every hearing shall be conducted by a Hearing Officer designated by the Director. The Hearing Officer shall take all necessary action to avoid delay, to maintain order and to develop a clear and complete record, and shall have all powers necessary and appropriate to conduct a fair hearing and to render a decision on the petition, including the following:

A) To administer oaths and affirmations;

B) To receive relevant evidence;

C) To regulate the course of the hearing and the conduct of the parties and their counsel;

D) To consider and rule upon procedural requests;

E) To examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitive or cumulative testimony and set reasonable limits on the amount of time each witness may testify;

F) To require the production of documents or subpoena the appearance of witnesses, either on the Hearing Officer's own motion or for good cause shown on motion of any party of record.

2) Every interested person wishing to participate at the hearing shall enter an appearance in writing. The Hearing Officer shall determine if the interested person shall be allowed to enter as a party of record. The Hearing Officer shall base that determination on the same standards used to determine parties in the Circuit Court.

3) All participants in the hearing shall have the right to be represented by counsel.

4) The Hearing Officer shall allow all parties to present statements, testimony, evidence and argument as may be relevant to the proceeding.

5) At least one representative of the Department shall appear at any hearing held under this Section and shall be given the opportunity to question parties or otherwise elicit information necessary to reach a decision on the petition.

6) When applicable, the following shall be addressed prior to receiving evidence:

A) The petitioner may offer preliminary exhibits, including documents necessary to present the issues to be heard, notices, proof of publication and orders previously entered in the cause.

B) Ruling may be made on any pending motions.

C) Any other preliminary matters appropriate for disposition prior to presentation of evidence may be addressed.

f) Evidence

1) Admissibility: A party shall be entitled to present his or her case by oral or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received but the presiding Hearing Officer shall exclude evidence that is irrelevant, immaterial or unduly repetitious. The rules of evidence and privilege applied in civil cases in the courts of the State of Illinois shall be followed; however, evidence not admissible under those rules of evidence may be admitted, except when precluded by statute, if it is of a type commonly relied upon by reasonable, prudent men in the conduct of their affairs. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, a Hearing Officer shall allow evidence to be received in written form.

2) Official Notice: Official notice may be taken of any material fact not appearing in evidence in the record if the circuit courts of this State could take judicial notice of that fact. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge.

3) Order of Proof: The petitioner shall open the proof. Other parties of record shall be heard immediately following the petitioner. The Hearing Officer or Department representatives may examine any witnesses. In all cases, the Hearing Officer shall designate the order of proof and may limit the scope of examination or cross-examination.

4) Briefs: The Hearing Officer may require or allow parties to submit written briefs to the Hearing Officer within 10 days after the close of the hearing or within such other time as the Hearing Officer shall determine as being consistent with the Department's responsibility for an expeditious decision.

g) Record of Proceedings; Testimony

 The Department shall provide at its expense a certified shorthand reporter to take down the testimony and preserve a record of all proceedings at the hearing. Any person testifying shall be required to do so under oath. However, relevant unsworn statements, comments and observations by any interested person may be heard and considered by the Department and included in the record.

h) Postponement or Continuance of Hearing

 A hearing may be postponed or continued for due cause by the Hearing Officer upon his or her own motion or upon the motion of a party to the hearing. A motion filed by a party to the hearing shall set forth facts attesting that the request for continuance is not for the purpose of delay. Except in the case of an emergency, motions requesting postponement or continuance shall be made in writing and shall be received by all parties to the hearing at least 3 business days prior to the scheduled hearing date. All parties involved in a hearing shall avoid undue delay caused by repetitive postponements or continuances so that the subject matter of the hearing may be resolved expeditiously.

i) Default

 If a party, after proper service of notice, fails to appear at the pre-hearing conference or at a hearing, and if no continuance is granted, the Department may then proceed to make its decision in the absence of that party. If the failure to appear at a pre-hearing conference or hearing is due to an emergency situation beyond the parties' control, and the Department is notified of the situation on or before the scheduled pre-hearing conference or hearing date, the pre-hearing conference or hearing will be continued or postponed pursuant to Section 240.133(h). Emergency situations include sudden unavailability of counsel, sudden illness of a party or his or her representative, or similar situations beyond the parties' control.

j) Order

1) Upon the conclusion of any hearing held under this Section, the Hearing Officer, after consultation with the Department representatives, shall prepare an order disposing of the petition, which shall be presented to the Director for entry.

2) The order shall grant the petition based on the record if the Hearing Officer finds that establishing the drilling unit will prevent waste, protect the correlative rights of the owners in the pools, and prevent the unnecessary drilling of wells.

3) No drilling unit shall be established *which requires the allocation of more than 40 acres of surface area nor less than 10 acres of surface area to an individual well for production of oil from a pool the top of which lies less than 4000 feet beneath the surface (as determined by the original or discovery well in the pool) provided, however, that the Department may permit the allocation of greater acreage to an individual well* and *provided further that the spacing of wells in any pool the top of which lies less than 4000 feet beneath the surface (as determined by the original or discovery well in the pool) shall not include the fixing of a pattern except with respect to the 2 nearest external boundary lines of each drilling unit.* (Section 21.1 of the Act)

4) The drilling units established by an order under this Section *shall be of approximately uniform size and shape for each entire pool, except that where circumstances reasonably require, the Department may grant exceptions to the size or shape of any drilling unit or units,* in which case the order shall state the particular circumstances that require the exception.

5) *Each order establishing drilling units shall specify the size and shape of the unit, which shall be such as will result in the efficient and economical development of the pool as a whole*, and subject to the provisions of subsection (j)(3), *the size of no drilling unit shall be smaller than the maximum area that can be efficiently and economically drained by one well.*

6) *Each order establishing drilling units for a pool shall cover all lands determined or believed to be underlain by such pool. Each order establishing drilling units may be modified by the Department to change the size thereof, or to permit the drilling of additional wells.*

7) *Each order establishing drilling units shall prohibit the drilling of more than one well on any drilling unit for the production of oil or gas from the particular pool with respect to which the drilling unit is established* and subject to the provisions of subsection (j)(3) *shall specify the location for the drilling of such well thereon, in accordance with a reasonably uniform spacing pattern, with necessary exceptions for wells drilled or drilling at the time of the application. If the Department finds, after notice and hearing,* notice being made as provided in this Section to all parties of record in the proceeding, *that surface conditions would substantially add to the burden or hazard of drilling such well at the specified location, or for some other reason it would be inequitable or unreasonable to require a* *well to be drilled at the specified location, the Department may issue an order permitting the* *well to be drilled at a location other than that specified in the order establishing drilling units.*

8) *After the date of the notice for a hearing called to establish drilling units, no additional well shall be commenced for production from the pool until the order establishing drilling units has been issued unless the commencement of the well is authorized by order of the Department.*

9) *After an order establishing a drilling unit or units has been issued by the Department, the commencement of drilling of any well or wells into the pool with regard to which such unit was established for the purpose of producing oil or gas therefrom, at a location other than that authorized by the order, or by order granting exception to the original spacing order is hereby prohibited.* (Section 21.1 of the Act)

10) As an alternative to denying the petition for a drilling unit, the Department may issue an interim order outlining the substantive deficiencies that must be cured by the petitioner in order to avoid dismissal. If the petitioner supplies the information requested by the Department, a new hearing shall be scheduled in order to examine the documents. If the petitioner fails to comply with the interim order, the petition shall be denied. The Department shall send notice of the hearing to all parties of record.

k) Order − Final Administrative Decision

 The Director's order is a final administrative decision of the Department, pursuant to Section 10 of the Act.

(Source: Amended at 38 Ill. Reg. 18717, effective August 29, 2014)